STATE OF CALIFORNIA GRAY DAVIS, *GOVERNOR*

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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April 18, 2001

Stacey Simon
Deputy County Counsel
Office of the County Counsel
Mono County
P.O. Box 2415
Mammoth Lakes, CA 93546

Re: Public Works Case No. 2001-002
Mono County Transfer Station/Construction and Demolition Waste Landfill

Dear Ms. Simon:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the operation of the Mono County transfer station by a contractor under contract with the County of Mono is not a public work requiring the payment of prevailing wages to the contractor's employees.

Mono County is restructuring its solid waste program. This will include closing and converting several landfills into transfer stations that will be operated by a private contractor. At one of the transfer station sites, the County will continue to operate a landfill for construction and demolition waste ("C & D waste"). This is to provide a location for contractors working in the northern part of Mono County to deposit their C & D waste. County employees will go to this site every 90 days and cover the material. Transfer station employees will only direct contractors or construction workers to the area where the C & D waste is to be deposited, and collect fees for such disposal.

Section 1720(a) defines "public work" to include: "construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds. . . ." Section 1720.3 states "for the limited purposes of Article 2 (commencing with Section 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including

the California State University and the University of California, or any political subdivision of the state." Section 1771 states in relevant part: "not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work."

The question presented is whether the contractor's employees who collect fees and direct contractors where to deposit the C & D waste are entitled to prevailing wages. The California Attorney General has recently stated[1] that, where a private contractor operates a solid waste transfer station for a county, the prevailing wage law does not apply to the contractor's employees who (1) collect fees from trash collection companies and others for unloading trash into the station's containers, (2) monitor the unloading to prevent the placement of hazardous wastes into the containers, and (3) periodically transport the containers to a county-operated landfill, are not entitled to be paid prevailing wages.

As noted in the Attorney General's opinion:

> We have previously determined that the prevailing wage law applies to employees of a contractor who operates a county landfill where the land surface is altered by the employees in the course of their work. ... ***In the present situation, in contrast, the surface of the land is not subject to alteration by the employees of the contractor*** in the performance of their duties at the transfer station.
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> We find nothing in section 1720 that would make the operation of the transfer station (collecting fees, monitoring, unloading, and transporting the containers to a landfill) the performance of "public works." There is no "construction, alteration, demolition, or

[1] California Attorney General's Opinion No. 00-402, dated July 26, 2000.

> repair work" being performed by the contractor's employees. (Emphasis added.) Ops.Cal.Atty.Gen. No. 00-402, pp. 3, 4.

In the present case, the employees of the contractor are not undertaking construction, alteration, demolition or repair work. The fact that the transfer station is located adjacent to the C & D waste area does not require that the workers at the transfer station be paid prevailing wages for collecting fees and directing contractors to the landfill location. The work of covering the construction debris will be carried out by County employees approximately every 90 days. While these County employees will be engaged in alteration of the surface of the land, which would meet the definition of public works contained in section 1720(a), permanent public sector employees are not entitled to be paid prevailing wages. Lab. Code § 1771; *Bishop v. San Jose* (1969) 1 Cal.3d 56, 81 Cal.Rptr. 465.

Finally, I do not find that the work in question falls within the definitions of refuse hauling under section 1720.3 or maintenance under section 1771. This is because the contractor's employees are not engaged in refuse hauling from a public works site or maintenance work at a public works site.

For the reasons stated above, the operation of a transfer station by a contractor's employees does not require that the employees of the contractor be paid prevailing wages where these employees merely collect fees and direct contractors to an adjacent disposal location and undertake no work within the meaning of sections 1720(a), 1720.3, and 1771.

Sincerely,

Stephen J. Smith

Stephen J. Smith
Director